

UNITED STATES OF AMERICA
DISTRICT OF MAINE

DONALD PELLETIER, Personal)	
Representative for the Estate of)	
RONALD H. PELLETIER,)	
)	
Plaintiff)	
)	
v.)	Civil No. 00-212-B-C
)	
STATE OF MAINE,)	
)	
Defendant)	

**RECOMMENDED DECISION ON DEFENDANT
STATE OF MAINE’S MOTION TO DISMISS (DOCKET No. 2),
DEFENDANTS MAGNUSSON, MERRILL, WHITTAKER AND
ZUBROD’S MOTION FOR SUMMARY JUDGMENT AND
MOTION TO DISMISS (DOCKET No. 3), and
PLAINTIFF’S MOTION FOR ORDER TO DEFER RULING (DOCKET No. 13)**

Plaintiff, the Personal Representative of the Estate of Ronald H. Pelletier, filed suit against the State of Maine and various other Defendants who are employees and/or agents of the State alleging, *inter alia*, violation of Pelletier’s federal constitutional rights pursuant to 42 U.S.C. § 1983. Defendants removed the matter to this Court and filed a Motion to Dismiss (Docket No. 2) and a Motion to Dismiss and for Summary Judgment (Docket No. 3). Plaintiff filed a Motion to Defer Ruling until Discovery is Complete (Docket No. 13). I now recommend that the Court **GRANT** Defendant State of Maine’s Motion to Dismiss (Docket No. 2) and **GRANT** Defendants Magnusson, Merrill, Whittaker, and Zubord’s Motion to Dismiss those claims asserted against them in their official capacities and asserted under Article I, § 9 of the Maine Constitution; **GRANT** Defendant Whittaker’s Motion for Summary Judgment; and **DENY** the other Defendants’

Motion for Summary Judgment (Docket No. 3), conditioned upon the Plaintiff filing a motion to amend the Complaint. I further recommend that the Court treat Plaintiff's Motion to Defer Ruling (Docket No. 13) as a Motion Pursuant to Rule 56(f) and **GRANT** Plaintiff leave to conduct further discovery.

Factual Background

This case arises out of the October 3, 1998 suicide of Ronald Pelletier, who resided at the Maine State Prison at the time of his death. Plaintiff, as Personal Representative of Pelletier's estate, filed suit against Defendants State of Maine, Martin Magnusson, Jeffrey Merrill, Stephen Zubrod, Paul Whittaker, and "Unknown Defendants." The individual Defendants are sued pursuant to 42 U.S.C. § 1983 in both their individual and official capacities. Plaintiff also recites a claim pursuant to Article I, § 9 of the Maine Constitution. By Amended Complaint Alan Bartlett and Jason Stewart have been added as named Defendants. They do not join in any of these motions.

Defendant Magnusson is the Commissioner of the Maine Department of Corrections, Jeffrey Merrill is Warden of the Maine State Prison, Stephen Zubrod is a prison psychologist, and Paul Whittaker is a correctional caseworker. Bartlett and Stewart were guards at the Prison, allegedly responsible for the care and management of Pelletier on October 3, 1998. It is alleged that each of the Defendants acted with deliberate indifference to the well-being of Pelletier when they knew or should have known that he was suicidal and failed to take the necessary precautions to prevent him from harming himself.

Discussion

I. Motions to Dismiss

Defendant State of Maine has filed a Motion to Dismiss (Docket No. 2), relying upon the well known doctrine that a state is not a “person” within the meaning of 42 U.S.C. § 1983. *See Will v. Michigan Dept. of State Police*, 491 U.S. 58, 67-68 (1989). Plaintiff has filed no opposition to this motion and the Court should grant the relief requested.

In Defendants’ other Motion to Dismiss (Docket No. 3), they seek dismissal of the action against them in their official capacities. In support of this motion Defendants cite *Kentucky v. Graham*, 473 U.S. 159 (1985), for the undisputed proposition that state actors cannot be sued for damages under 42 U.S.C. § 1983 when acting in their official capacities. A monetary claim against a state official in his official capacity is merely another way of pleading an action against the entity and is not permitted when the entity is a state itself. *See id.* at 165. Plaintiff does not dispute this point, but argues nevertheless that the Maine State Prison may be a municipal corporation as alleged in paragraph 21 of his complaint and therefore subject to an “official capacity” suit and monetary damages.

Plaintiff supports his argument that the State Prison may be a municipality with a hearsay telephone conversation between his secretary and an unknown individual at the State Prison. He cites no Maine case law or statute suggesting that the Maine State Prison has legal status as a municipality of the State of Maine. Although Plaintiff alleges in his complaint that the Prison is a municipal corporation, that allegation is nothing but a legal conclusion and can be tested by a Motion to Dismiss. In fact, the Maine Law Court

does not recognize the State Prison as a separate legal entity at all. *See Clark v. Maine Dept. of Corrections*, 463 A.2d 762, 765 (Me. 1983) (“The Maine State Prison is neither an agency nor a legal entity which can sue or be sued. Accordingly, we conclude that it cannot be a party defendant to these proceedings.”) Plaintiff’s claim against these Defendants in an official capacity fails to state a claim.

Turning to the second aspect of the Defendants’ Motion to Dismiss (Docket No. 3), they also assert that in order to obtain relief for a violation of a state constitutional claim under Article I, Section 9 of the Maine Constitution, Plaintiff must state a claim for relief under 5 M.R.S.A. § 4682. A violation of a state constitutional right is not actionable pursuant to 42 U.S.C. § 1983 because Section 1983 requires a violation of a federal statutory or constitutional right in order to state a claim. *See Ahern v. O'Donnell*, 109 F.3d 809, 815, (1st Cir. 1997) (“By the terms of the statute itself, a section 1983 claim must be based upon a *federal* right.”) The Maine statutory provision, 5 M.R.S.A. § 4682, establishes a civil cause of action for person whose state or federal constitutional or statutory rights have been intentionally interfered with through actual or threatened violence, damage or destructions of property or trespass. *See Caldwell v. Federal Express Corp.*, 908 F.Supp. 29, 32 (D. Me. 1995).

Defendants’ Motion to Dismiss on this issue tests the sufficiency of the pleadings. In response, Plaintiff apparently agrees that if he relies upon the Maine constitutional violation, in order to state a claim he must do so pursuant to 5 M.R.S.A. § 4682. Furthermore Plaintiff does not disagree with the contention that in order to state a claim under § 4682 he must at minimum allege a threat of force or violence against a person. He responds to that argument not on the basis of anything pled in the Complaint,

but on the basis that decedent's parents believe that Pelletier might have been threatened with removal to the general population at a time when his mental condition was far from stable. Assuming that "threat" would suffice under § 4682, it is not plead in this Complaint nor is the "threat" assigned to any of the Defendants' conduct, either directly or through policy, custom, or usage. The Complaint fails to state a claim for violation of a Maine constitutional right.

II. Motion for Summary Judgment

Defendants Magnusson, Merrill, Whittaker, and Zubrod have all moved for summary judgment and filed affidavits wherein they each assert that they had no personal contact with Decedent and did not personally monitor or make decisions regarding his daily mental health status or security needs. Defendants argue that liability for damages under 42 U.S.C. § 1983 cannot be based on a theory of vicarious liability or *respondeat superior*. They are correct. *See Monell v. Department of Social Services*, 436 U.S. 658, 694 n.58 (1978) (citing *Rizzo v. Goode*, 423 U.S. 362, 370-71 (1976)); *Voutour v. Vitale*, 761 F.2d 812, 819-20 (1st Cir. 1985). However, Plaintiff argues that his Complaint adequately alleges supervisory responsibility by alleging that at least three of these Defendants had supervisory responsibilities that resulted in inadequate training of subordinates or issuance of policies or directives that were deliberately indifferent to Decedent's mental health needs. Thus, Plaintiff argues that given appropriate discovery he would be able to prove an "affirmative link" between subordinate officers and their supervisors through "conduct that amounts to condonation or tacit authorization." *Carmono v. Toledo*, 215 F.3d 124, 132 (1st Cir. 2000) (quoting *Camilo-Robles v. Zapata*, 175 F.3d 41, 43-44 (1st Cir. 1999)).

Defendants counter Plaintiff's argument requesting further discovery on the issue of supervisory liability under Rule 56(f) with the suggestion that Plaintiff's Complaint does not plead sufficient facts to state a claim against these Defendants under a theory of supervisory liability. According to Defendants, responding to Defendants' affidavits filed in support of their motion with a counter motion pursuant to Rule 56(f) is inappropriate when Plaintiff has not plead any facts at all that would give rise to supervisory liability. Defendants assert that by describing the alleged positions of supervisory authority held by Magnusson, Merrill, and Zubrod, the Plaintiff has, at best, pled liability on the basis of *respondeat superior*, a theory that is inapplicable to this section 1983 action.

Defendant Whittaker clearly has the strongest argument on the summary judgment motion. The Amended Complaint (Docket No. 9) alleges that Whittaker was a correctional caseworker responsible for the care and management of Decedent Pelletier. In his affidavit Whittaker says he has no personal recollection of Pelletier and that he has no institutional responsibilities regarding mental health treatment or security needs. Plaintiff bases his Rule 56(f) motion on the fact that in early August, 1998, Whittaker apparently responded to a request made by *Pelletier's parents* regarding visitation policies at the State Prison. According to Plaintiff, Whittaker wrote to the parents during a time period when Pelletier was "doing alright" at the State Prison. (Kolle Affidavit at ¶ 4.) There is absolutely no suggestion that Whittaker was personally involved with Decedent at the relevant time nor is there any suggestion that further discovery would disclose a supervisory role and an "affirmative link" between Whittaker and any of the other actors alleged to have been deliberately indifferent to Decedent's mental health

needs. Whittaker is entitled to summary judgment on this record. Plaintiff's request for leave to proceed pursuant to Rule 56(f) as to Whittaker is ill advised. Nothing in Plaintiff's Rule 56(f) affidavit explains how additional discovery would create a dispute of material fact.¹

Defendants Magnusson, Merrill, and Zubrod present a more difficult issue. They argue that Plaintiff cannot rely on Rule 56(f) for additional time to conduct discovery on a theory of liability that has neither been pled nor contested. In a suit involving a theory of supervisory liability, it remains the obligation of the plaintiff to plead facts supporting the applicable theory with requisite specificity. Plaintiff fails to include any allegation to link Defendants Magnusson, Merrill, and Zubrod to Decedent's denial of appropriate mental health treatment and precautions. *See Ramirez v. Colon*, 21 F.Supp. 2d 96, 98 (D. P.R., 1996) ("Allegations which are nothing more than broad, simple and conclusory statements are insufficient to state a claim under section 1983.")

Plaintiff counters that supervisory liability has been pleaded when paragraphs 23 and 24 of the Amended Complaint are read in conjunction with paragraphs 3, 4 and 6, which describe the supervisory roles of the three men, and paragraph 15, which describes with specificity the acts which constituted deliberate indifference to Decedent's well-being. Paragraphs 23 and 24 allege that Defendant State of Maine "establish[ed] and condon[ed] a policy of [*sic*] custom allowing the acts alleged herein to be performed by its agents" and "failed to adequately train its personnel on proper procedures and methods including, but not limited to, assessing suicide risks posed by inmates. . . ."

¹ Plaintiff apparently takes the position that because Whittaker once responded to a inquiry made by Decedent's parents regarding visitation policies at the Prison and because he is employed as a "caseworker" he can be sued for deliberate indifference to Decedent's constitutional rights. Plaintiff simply has not articulated any theory of liability nor any specific conduct that could be applicable to Whittaker.

As indicated above, Defendant State of Maine will be dismissed from this case without objection. If Plaintiff intended by the Amended Complaint to allege in Paragraph 15 the “affirmative link” between these three named Defendants and the conduct complained of with specificity, it does not appear to me that he made the connection. On the other hand, to grant Defendants’ Motion for Summary Judgment without giving the Plaintiff the opportunity to move to amend his Complaint to allege a viable theory of supervisory liability under Section 1983, and thereby foreclose all further discovery as to the role, if any, of these Defendants in Decedent’s death appears unwarranted at this extremely early stage of these proceedings. Presumably, discovery has already commenced or will shortly commence as to the two remaining Defendants. Granting Plaintiff’s Rule 56(f) motion to allow further discovery on the issue of supervisory liability is reasonable, provided that Plaintiff moves to amend his Complaint to include a claim of supervisory liability that is pled with the requisite specificity.

Conclusion

Based upon the foregoing I recommend that the District Court **GRANT** Defendant State of Maine’s Motion to Dismiss (Docket No. 2). I further recommend that the Court **GRANT-IN-PART** Defendants’ Motion for Summary Judgment and to Dismiss (Docket No. 3) by granting summary judgment to Defendant Paul Whittaker and by granting all Defendants’ Motion to Dismiss as to their official capacities and as to Plaintiff’s claim pursuant to Article I, Section 9 of the Maine Constitution. I further recommend that the Court **DENY** the remaining Defendants’ Motion for Summary Judgment, but grant them leave to renew said motion following the expiration of the deadline for the amendment of pleadings set in the Scheduling Order accompanying this

Recommended Decision if the Plaintiff does not obtain leave to amend the Complaint to properly allege a theory of supervisory liability. I also recommend that the Court **GRANT-IN-PART** Plaintiff's Motion to Defer Ruling on the Summary Judgment Motion solely as it relates to Defendants Magnusson, Merrill, and Zubrod (Docket No. 13). Those Defendants may renew their Motion for Summary Judgment in accordance with the Court's Scheduling Order issued herewith.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which *de novo* review by the district court is sought, together with a supporting memorandum, within ten (10) days of being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to *de novo* review by the district court and to appeal the district court's order.

Margaret J. Kravchuk
U.S. Magistrate Judge

Dated: December 15, 2000

U.S. District Court
District of Maine (Bangor)

CIVIL DOCKET FOR CASE #: 00-CV-212

PELLETIER v. MAINE, STATE OF, et al
10/17/00

Filed:

Assigned to: JUDGE GENE CARTER

Demand: \$0,000

Nature of Suit: 440

Lead Docket: None

Jurisdiction: Federal

Question

Dkt # in Knox Superior Court : is N/A

Cause: 42:1983 Civil Rights Act

DONALD PELLETIER, as Personal
Representative of the Estate of
Ronald H. Pelletier
 plaintiff

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v.

MAINE, STATE OF
 defendant

DIANE SLEEK
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SUSAN A. SPARACO, ESQ.
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MARTIN A MAGNUSSON,
Individually and in his
Official Capacity as
Commissioner of the Maine
Department of Corrections
 defendant

DIANE SLEEK
(See above)
[COR]
SUSAN A. SPARACO, ESQ.
(See above)
[COR LD NTC]

JEFFREY MERRILL, Individually
and in his Official Capacity
as Warden of the Maine State
Prison
 defendant

DIANE SLEEK
(See above)
[COR]
SUSAN A. SPARACO, ESQ.
(See above)

STEFAN ZUBROD, Individually
and in his Official Capacity
as Chief Medical Officer at
the Maine State Prison
 defendant

DIANE SLEEK
(See above)
[COR]
SUSAN A. SPARACO, ESQ.
(See above)

PAUL WHITAKER, Individually
and in his Official Capacity
as Correctional Caseworker at
the Maine State Prison
 defendant

DIANE SLEEK
(See above)
[COR]
SUSAN A. SPARACO, ESQ.
(See above)

UNKNOWN DEFENDANTS
 defendant

=====

ALAN BARTLETT, Individually
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as guard at the Maine State
Prison
 defendant

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JASON STEWART, individually
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Prison
defendant

DIANE SLEEK
(See above)
[COR]
SUSAN A. SPARACO, ESQ.
(See above)